

PART III
PROCEDURAL ISSUES

C. PAYMENT OF BENEFITS

2. UNDER THE 1981 AMENDMENTS TO THE ACT

b. Claim "Denied"

The first requirement for transfer of liability under the 1981 Amendments is that the claim must be denied prior to March 1, 1978, in accordance with Section 205(b) of the Act. 30 U.S.C. §902(i); see also 20 C.F.R. §725.496(b)(2). In the situation where there is an administrative or informal denial by the Department of Labor, the controlling denial must have occurred prior to March 1, 1977 in order to support transfer. **Comer v. Consolidation Coal Co.**, 7 BLR 1-764 (1985). Where a claim filed with the Department of Labor prior to March 1, 1977, has been subjected to repeated informal or administrative denials, the last such denial issued during the pendency of the claim is controlling. See 20 C.F.R. §725.496(e); **Lakey v. Alabama By-Products Corp.**, 7 BLR 1-796 (1985).

The Board has held that the form letters CM-990 and CM-1001 do not constitute denials but are merely warnings that the claim may be denied unless additional evidence is submitted. These letters state that the claim is under consideration, note that the evidence submitted by claimant is inadequate to establish entitlement, summarize the standards of proof applicable to the claim, and instruct claimant to submit additional evidence or express his intention to do so within 20 days, or a determination regarding entitlement will be made on the basis of the record then in evidence. Forms also note that this is not a final determination, and contain no language indicating a denial of eligibility. **Edwards v. Central Coal Co.**, 7 BLR 1-712 (1985); **Hubick v. Newcon Coals, Inc.**, 7 BLR 1-628 (1984); see **Jubas v. Consolidation Coal Co.**, 7 BLR 1-601 (1984).

An informal denial issued prior to March 1, 1977, will become a "denied" claim within the meaning of the 1981 Amendments unless claimant, within one year of the denial, takes one of the four actions enumerated in 20 C.F.R. §725.496(b)(2). **Hedrick v. Green Construction Co.**, 7 BLR 1-783 (1985).

CASE LISTINGS

[Board rejects denial by estoppel theory noting that Congress has refrained from placing time constraints on DOL's claims processing] **Hubick v. Newcon Coals, Inc.**, 7 BLR 1-628 (1984); **Henson v. United States Steel Corp.**, 6 BLR 1-1245 (1984).

[for claim to be considered denied by DOL for transfer of liability, it must have been denied more than one year prior to March 1, 1977; claim denied on December 14, 1976 did not eligible] **Comer v. Consolidation Coal Co.**, 7 BLR 1-764 (1985).

[actions indicating intent to pursue claim within year of informal denial do not preclude transfer; claimant's actions must conform to events by plain language of 1981 Amendments/Section 725.496(b)(2)] **Hedrick v. Green Construction Co.**, 7 BLR 1-773 (1985).

[claimant's request for informal conference constitutes, request for hearing under Section 725.496(b)(2)(i)] **Streets v. North American Coal Corp.**, 7 BLR 1-814 (1985).

[claimant's request for hearing within one year of informal denial on January 22, 1976, precludes transfer] **Tittle v. Coalite, Inc.**, 7 BLR 1-837 (1985).

[claimant's response to informal denial, "What I wanted to do was put in my claim for Black Lung Benefits and then freeze it until a later date. I will get the rest of my papers and send them to you," constituted intention to submit additional evidence] **Caudill v. Newcon Coals Inc.**, 7 BLR 1-852 (1985).

[when initial denial of claim occurred on February 20, 1980, claim did not constitute "denied" claim under Section 725.496(b)] **Feathers v. Consolidation Coal Co.**, 8 BLR 1-25 (1985).

[SSA letter, stating that claim had been erroneously filed with SSA, "technically disallowing" claim, does not constitute denial] **Hindman v. Bennoc, Inc.**, 8 BLR 1-123 (1985).

[under 1977 Act, *pending* and denied claims were to be reconsidered; thus, form CM-1088 does not establish the existence of a denial] **Etzweiler v. Cleveland Brothers Equipment Co.**, 8 BLR 1-172 (1985).

[DOL letter informing claimant that evidence did not support entitlement and case would be administratively closed if additional evidence not submitted within ten days constitutes informal denial] **McConnell v. Amax Coal Co.**, 8 BLR 1-274 (1985).

[claim filed between July 1 and December 31, 1973 should have been processed by DOL as Section 415 transition period claim; thus SSA denial is nullity and could not constitute "denial" under 1981 Amendments] **Warholc v. Barnes & Tucker Co.**, 8 BLR

1-281 (1985).

[claim in approval status at time of enactment of Reform Act, even though previously denied, is not denied claim subject to transfer] **Lawley v. United States Steel Corp.**, 11 BLR 1-14 (1985).

DIGESTS

The Board held that the administrative law judge erred in finding that the Department of Labor's failure to take any action on the case for 15 months constituted a *de facto* denial, and erred in adopting an equitable estoppel theory to preclude the Department of Labor from raising the lack of a denial to defeat transfer. The Board reaffirmed its prior holdings in **Hubick v. Newcon Coals Inc.**, 7 BLR 1-628 (1985) and **Edwards v. Central Coal Co.**, 7 BLR 1-712 (1985), that specific time constraints may not be placed on the Department of Labor's processing of claims. **Miller v. Alabama By-Products Corporation**, 11 BLR 1-72 (1988).

The Board held that even if claimant had made a valid election for Section 435 review of his denied Part B claim, the operation of the Department of Labor's regulations pertaining to the payment of duplicate claims would preclude transfer because the Part B claim, following election of Section 435 review, would merge *into* a pre-Reform Act Part C claim which claimant had filed, thus losing its status as a claim denied prior to passage of the 1977 Reform Act. This Part C claim, which "survived" the merger, was not denied prior to March 1, 1977, and thus did not have a procedural history which would support transfer. **Chadwick v. Island Creek Coal Co.**, 7 BLR 1-883 (1985), *aff'd*, 8 BLR 1-447 (1986)(en banc recon.).

5/95